

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ARCH INSURANCE COMPANY, Plaintiff,	§	
	§	
	§	
v.	§	
	§	CIVIL ACTION NO. 12-2092
WM MASTERS AND ASSOCIATES, INC., JIM STEWART; NANCY STEWART; MICHAEL KIMREY; ELSIE KIMREY; GREG THOMPSON; SARAH THOMPSON; MARK VALENCIA; HEEWON VALENCIA; AND FREEMAN SALES, LLC	§	
	§	
	§	
	§	
Defendants.	§	
	§	

**DEFENDANTS MICHAEL KIMREY
AND ELSIE KIMREY'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

TO THE HONORABLE BARBARA M.G. LYNN:

Defendants Michael Kimrey and Elise Kimrey (improperly identified as "Elsie" in the caption) file this Motion to Dismiss Plaintiff's Complaint under Rule 12(b)(6) due to Plaintiff's failure to comply with Texas Business Organizations Code § 9.051.

I.

On June 29, 2012, Plaintiff Arch Insurance Company filed suit seeking to enforce an alleged indemnity provision arising from certain "performance and payment bonds in connection with construction projects in the State of Texas." Plaintiff's Original Complaint at ¶ 14. However, Arch Insurance Company is not, and has never been, registered to do business in Texas. As a result, Arch Insurance Company is precluded from bringing the present action as a matter of law, and the Court should dismiss this matter with prejudice in accordance with Texas Business Organizations Code section 9.051.

Respectfully submitted,

By: /s/ Patrick W. Powers

Patrick W. Powers

State Bar No. 24013351

patrick@powerstaylor.com

Peyton J. Healey

State Bar No. 24035918

peyton@powerstaylor.com

POWERS TAYLOR LLP

Campbell Centre II

8150 North Central Expressway

Suite 1575

Dallas, Texas 75206

Phone: 214.239.8900

Fax: 214.239.8901

ATTORNEYS FOR DEFENDANTS MICHAEL
KIMREY AND ELSIE KIMREY

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July 2012, all counsel of record were served via ECF electronic service:

/s/ Peyton J. Healey

Peyton J. Healey